

Equal Employment Opportunity  
Complaint System

**Summary of Changes.** This regulation establishes policy and procedures for the Equal Employment Opportunity Complaint System for the California National Guard technician program. It replaces the Technician Personnel Manual, Chapter 11, dated March 2000.

**Applicability.** California National Guard Full-time Personnel Regulation (CNGFPR) applies to all California Army and Air National Guard technicians and to commanders, managers and supervisors (military or civilian) with authority or responsibility over technician personnel management.

**Proponent and Exception Authority.** The proponent of this regulation is the Joint Force Headquarters, J-1, Directorate for Human Resources. The proponent has authority to approve exceptions to this regulation when they are consistent with controlling laws and regulations.

**Supplementation.** Supplementation of this regulation is prohibited. This regulation is to be used in concert with FPH 930, EEO Guide.

**Suggested Improvements.** Users of this regulation are invited to send comments and suggested improvements to Office of the Adjutant General, Directorate for Human Resources, 9800 Goethe Road, Sacramento, CA 95826-9101.

**Distribution.** Distribution of the regulation is Army - A and Air Force - F.

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**1. Purpose.**

This regulation provides an overview of the laws, policy, and steps in filing a discrimination complaint. It also informs of other programs within the Equal Employment Opportunity Program.

**2. References.**

NGR (AR) 690-600/NGR (AF) 40-1614; 29CFR Part 1614; Management Directive 110; Management Directive 715.

### 3. General.

If a technician or applicant for employment believes that they are a victim of discrimination based on race, color, national origin, gender (including sexual harassment), religion, age, mental or physical handicap, or retaliation for participating in a Title VII complaint, they have the right to seek resolution through the Equal Employment Office complaint system. Elimination of discrimination is the primary function of the complaint system. It must be pointed out that complaints cannot be filed for actions that are not within the purview of the California National Guard or National Guard Bureau to remedy. These would be complaints dealing with personnel policies and employment practices imposed on the National Guard by statutes or directives of the Department of Defense, or the Departments of the Army or the Air Force, or rules of Federal agencies such as Office of Personnel Management (OPM).

### 4. Sexual Harassment.

Sexual harassment is a sub-category of sex discrimination.

a. Sex Discrimination – The denial of one's rights to employment, training, upward mobility, etc., solely on the basis of gender.

b. Sexual harassment – A form of sex discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

(1) Submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of job, pay, career.

(2) Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person.

(3) Such conduct interferes with an individual's performance or creates an intimidating, hostile, or offensive environment.

c. Any person in a supervisory or command position who uses or condones implicit or explicit sexual behavior to control, influence, or affect the career, pay or job of a military member or civilian employee is engaging in sexual harassment. Similarly, any military member or civilian employee who makes unwelcome verbal comments, gestures, or physical contact of a sexual nature is also engaging in sexual harassment.

### 5. Individual Discrimination Complaint (EEO) Processing System.

a. If a technician believes an action or incident of personnel action is discriminatory, they should contact an EEO Counselor or the State Equal Employment Manager (SEEM) within 45 calendar days from the date of the incident or when they become reasonably aware that an incident occurred. Also, if a representative is retained, legal or otherwise, the EEO counselor or SEEM must be notified in writing of this person's name, address, telephone number, and whether or not they are a lawyer.

b. The EEO Counselor will:

(1) Advise the complainant of their rights and responsibilities in filing a complaint.

(2) Conduct an informal inquiry. If desired and/or possible, the complainant's name will be kept anonymous during the informal process only.

(3) Resolution must be accepted by all parties concerned not just the complainant within 30 calendar days from the date contacted by the complainant. The counseling period may be extended an additional 30 days upon the request of the complainant to provide the EEO counselor additional time to resolve the complaint.

(4) Offer the complainant the option to use the Alternative Dispute Resolution process (ADR) at any time during the counseling process. This process helps the informal counseling process and will involve top management and decision makers who have the authority to remedy grievances raised. A neutral mediator from another agency and state is often used during the ADR to bring about an agreement between both parties. A further explanation of ADR can be found in NGR (AR) 690-600/NGR (AF) 40-1614. If the complaint is resolved at the informal level, no further action is required and it will be administratively closed. If it is not resolved, the complainant will have 15 calendar days from the date of the final interview in which to file a formal complaint. The complaint form is to be sent to the Office of the Adjutant General, ATTN: CAJS/EEO, 9800 Goethe Road, Post Office Box 269101, Sacramento, CA 95826-9101.

c. The Adjutant General will:

(1) Accept or dismiss all or part of the complaint using the criteria from NGR (AR) 690-600/NGR (AF) 40-1614. Acceptance or dismissal does not signify agreement or disagreement with the issues raised. It is based solely on the procedural criteria cited in paragraph NGR (AR) 690-600/NGR (AF) 40-1614, VOL II para 4-10, not on the merits of the complaint.

(2) If accepted, request a formal investigation from NGB.

(3) Continue to attempt resolution.

(4) If dismissed in whole or in part, the complainant will be notified in writing, of the reason for the dismissal and the process to appeal the dismissal. Dismissal of a complaint constitutes an agency decision with appeal right and must be transmitted to National Guard Bureau for review.

d. National Guard Bureau will:

(1) Appoint an independent investigator to look into the allegations accepted for investigation.

(2) Inform the complainant and California National Guard officials of the completion of the investigation. At this time, the Report of Investigation (ROI) will be sent to the complainant and The State Equal Employment Manager (SEEM).

(3) Make the final decision/recommendation on the complaint. The complainant may request an immediate final decision from NGB or an EEOC hearing with a final decision from NGB. This request must be made within **30 calendar days** after receiving notice that the investigation is completed.

e. The Equal Employment Opportunity Commission (EEOC) will:

(1) Appoint an Administrative Law Judge for a hearing if one is requested.

(2) Forward their findings to NGB-EO and the complainant.

f. If the complainant is not satisfied with the results of the hearing and/or the final decision of NGB-EO, they may appeal the decision within **30 calendar days** to the Director, Office of Federal Operations, EEOC. The complainant also has the right to file a civil action in a U.S. District Court within **90 calendar days** from the date of the final decision or if the decision is on appeal.

## **6. Class Complaint Processing System.**

a. A class complaint is a written discrimination complaint alleging that a personnel policy or practice discriminates against a class of people and that the person filing the complaint has been personally injured. A class complaint is filed by an agent of the class on the behalf of that class. To be considered as a class complaint, the complaint must allege that:

(1) The class is so numerous that a consolidated complaint filed by individual members of the class is impractical.

(2) There are questions of fact common to the class.

(3) The claims of the agent of the class are typical of the claims of the class. The agent must allege that they have been personally harmed by a personnel policy or practice that the National Guard has the authority to change or abolish.

(4) The agent for the class will fairly and adequately protect the interests of the class.

b. A formal class complaint of discrimination may only be filed after the completion of the informal process as with an individual discrimination complaint. National Guard Bureau is responsible for issuing an acceptance or dismissal notice of a class complaint. However, prior to this, an EEOC Administrative Judge of complaints will review the case and make a recommendation to NGB. After receiving the recommendation, NGB will issue a final decision and inform the agent of the class of the right of appeal or to file a civil action.

## **7. Time Line for Filing a Technician Complaint.**

Technician (EEO) Complaints: For federal technicians or applicants for technician positions:

a. Contact an EEO counselor or the SEEM within **45 calendar days** from the date of the alleged discriminatory act or when you become reasonably aware of the act.

b. Informal counseling will be within **30 calendar days**, unless the complainant agrees to extend the process for an additional **30 calendar days**. This is only with agreement from the SEEM and if there is a possibility of resolving the complaint.

c. If the complaint is not resolved at the informal stage, the complainant will have **15 calendar days** from the date of the final interview in which to file a formal complaint.

## **8. Special Emphasis Program.**

Special emphasis programs are specifically designed to address the concerns of minority and female groups that often are not concerns/issues faced by the general workforce. The managers of the program have been nominated by the SEEM and Directorate for Human Resources and appointed by the Adjutant General.

## **9. Special Emphasis Program Manager (SEPM).**

a. Special Emphasis programs are designed to assist The Adjutant General (TAG), the SEEM, and installation commanders in identifying barriers that exclude minorities and females from employment and advancement in this organization. Each program manager assists in devising strategies for overcoming identified barriers and help set goals and monitor efforts to eliminate identified barriers. The managers coordinate special events/activities concerning the TAG's programs for the purpose of raising equal opportunity and cross-cultural awareness.

b. The different observances are as follows:

- (1) Martin Luther King Jr. Birthday - 15 January
- (2) African-American/Black/History Month - 1-28 February
- (3) Women's History Month - 1-31 March
- (4) Day of Remembrance of Victims of the Holocaust - 18-25 April
- (5) Asian Pacific America Heritage Month - 1-31 May
- (6) Hispanic Heritage Month - 15 September - 15 October.
- (7) National Disability Employment Awareness Month – 1-31 October
- (8) Native American - 1-30 November

c. Each observance program should serve as a forum for networking, mentoring, skills enhancement, personal/career growth and finding possible solutions to employment problems that may be unique to any of the groups. A technician can be assigned the collateral duties as Special Emphasis Program Manager. These duties are in addition to their regularly assigned duties and are effective until relieved by proper authority.

d. Annual ethnic observances are designed to enhance cross cultural awareness and promote harmony among all uniformed members, their families and the civilian workforce. These activities are extensions of the California National Guard's (CNG) Equal Employment Opportunity (EEO) and education and training objectives.

## 10. Glossary of Terms.

a. **AGENCY:** Those governmental organizations with employees covered by Title VII of the Civil Rights Act of 1991. For Affirmative Employment purposes, the California National Guard is considered an agency.

b. **AGENT:** As used with class complaints, an agent is a member of the class who acts for the class during the processing of the complaint.

c. **ALLEGATION:** An assertion by a complainant that an act or personnel action has been discriminatory.

d. **BASIS:** A reason, claimed by a complainant, for a discriminatory action; specifically, race, color, national origin, gender (to include sexual harassment), religion, age, physical or mental disability, or retaliation.

e. **CARSD-HR:** Directorate for Human Resource. Office within the California National Guard that provides support of a large variety to the technician and AGR workforce.

f. **CLASS:** As used with class complaints, a group of persons sharing a commonality:- women, African Americans, handicapped, etc.

g. **DISCRIMINATION:** A showing of partiality or prejudice in treatment. Specific action or policies directed against the welfare of a gender, race, ethnic or religious group.

h. **EEOC:** Equal Employment Opportunity Commission. The Federal organization which adjudicates equal employment opportunity complaints on appeal after the complaint has been investigated or the agency has failed to process the complaint in a timely manner.

i. **INDIVIDUAL DISCRIMINATION:** The behavior of an individual which is not based on a policy of the agency that results in the unequal or disparate treatment of an individual.

j. **PROTECTED GROUP:** Any group distinguished from the general population in terms of race, color, national origin, religion, age, disability and gender. While women are a majority in the general population, they are a "protected group" in terms of the technician labor force. The basic racial and ethnic categories are defined and should be consolidated and reported as follows:

- (1) African American – a person having origins in any of the racial groups in Africa.
- (2) Asian/Pacific Islander – a person having origins in any of the original peoples of the Far East, Southeast Asia, Indian subcontinent or the Pacific Islands.
- (3) Hispanic – a person of Mexican, Puerto Rican, Cuban, Central, or South American or other Spanish culture or origin regardless of race.
- (4) Native American/Alaskan Native – a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.
- (5) White – a person having origins in any of the original peoples of Europe, North Africa, the Middle East and not of Hispanic origin.
- (6) Other – a person who does not fit in any of the above categories or does not know their race or ethnic heritage.

k. **RETALIATION:** An act of reprisal, restraint, interference, or coercion against an individual because of their participation in the National Guard Discrimination Complaint System during any stage of presentation and processing. This includes testifying, assisting, or participating in an inquiry or investigation.

1. **SEEM:** The State Equal Employment Manager also known as the EEO Officer. The person who provides information and assistance to the complainants, EEO counselors, and management, with the processing of complaints of discrimination.

(1) Federal statutes task the Directorate for Human Resources with responsibility for developing and maintaining, in cooperation with other federal agencies and departments, appropriate prevention, treatment and rehabilitation programs and services for alcoholism, alcohol and drug abuse among federal employees. Policies and services are to make optimal use of existing governmental facilities, services and skills. National Guard Bureau regulations require each state to develop appropriate programs.

(2) The head of each agency of the Government of the United States may establish, within the limits of appropriations available, a health services program to promote and maintain the physical and mental fitness of employees under his/her jurisdiction.

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